UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND ADMINISTRATOR OF THE ST. JOSEPH HEALTH SERVICES OF RHODE ISLAND RETIREMENT PLAN, *et al.* Plaintiffs, v. PROSPECT CHARTERCARE, LLC, *et al.* Defendants.	:	C. A. No. 1:18-cv-00328-WES-LDA

REPLY TO PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO THE PROSPECT ENTITIES' CROSS MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF THE FIRST AMENDED COMPLAINT

INTRODUCTION

In an exhaustive, fifty-eight page attack[1] on the Prospect Defendants'[2] Cross-Motion for Summary Judgment, plaintiff Stephen Del Sesto and the individual co-plaintiffs (collectively, "Plaintiffs") essentially contest the ability of the St. Joseph Health Services of Rhode Island Retirement Plan (the "Plan") to satisfy any of the tests required for a plan to qualify for the "church plan" exemption – ever.

[1] At several points in their Memorandum in Opposition, Plaintiffs thankfully reference and incorporate, rather than repeat, arguments made in their previously-filed briefs, including those made in the 101-page Reply that Plaintiffs filed on September 1, 2020 (ECF #197) to respond to the Memorandum in Opposition the Prospect Defendants filed on June 26, 2020 (ECF #193-1); the Prospect Defendants filed *that* Opposition to counter Plaintiffs' original Motion for Summary Judgment on Count IV of the Complaint (ECF #173). *See* Plaintiffs' Reply to Prospect Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Summary Judgment on Count IV of First Amended Complaint (ECF #197; "Pl. Reply"). When referring to the Prospect Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary Judgment (ECF #193) in this brief, we use "Prospect Opp. Mem."

[2] Collectively, Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare, LLC, Prospect Chartercare SJHSRI and Prospect Chartercare RWMC, LLC.

Indeed, in their zeal to foreclose all possible avenues the Plan might take to qualify for exemption under the "church plan" rule found in Section 3(33) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), Plaintiffs now improbably challenge even the tax-exempt status of St. Joseph Health Services of Rhode Island, Inc. ("SJHSRI") under Section 501(c)(3) of the Internal Revenue Code ("Code"), apparently back to when SJHSRI was organized – an attack that, if successful, would *also* destroy the tax-favored status of the bonds SJHSRI sold in the years leading up to the 2014 sale of its hospitals' operating assets. *See* Plaintiffs' Memorandum of Law in Opposition to the Prospect Entities' Cross Motion For Summary Judgment on Count IV of the First Amended Complaint (ECF #202; "Pl. Opp.") at 49-56.

The Prospect Defendants reject such arguments as sophistry,[3] particularly given the position Plaintiffs have been taking in their own filings up to this point: that the Plan almost certainly qualified as an exempt "church plan" up to the point at which it was restated, effective July 1, 2011 – which means Plaintiff have not challenged SJHSRI's tax-exempt status until now.[4] *See* Plaintiffs' Motion for Summary Judgment as to Count IV of the First Amended Complaint, filed 12.17.19 (ECF #173; "Pl. Orig. Mot.") at 22-23. SJHSRI's status as a tax-exempt organization is (or, should be) non-controversial, rather than a basis for a street fight with broader

[3] According to Merriam-Webster, the original Sophists were ancient Greek teachers of rhetoric and philosophy prominent in the 5th century B.C. In their heyday, these philosophers were considered adroit in their reasoning, but later philosophers (particularly Plato) described them as sham philosophers, out for money and willing to say anything to win an argument. Thus *sophist* (which comes from the Greek *sophistēs,* meaning "wise man" or "expert") earned a negative connotation as "a captious or fallacious reasoner." www.merriam-webster.com/dictionary/sophistry

[4] Plaintiff Del Sesto's decision to file a Form 5500 with the IRS on April 15, 2019, which Del Sesto did, in part, to formally elect to subject the Plan to ERISA, also would have been wholly unnecessary if SJHSRI itself has never been a tax-exempt organization.

implications.[5] Plaintiffs' "burn it all down" approach, indicative of their approach throughout this litigation, undercuts their credibility.

Plaintiffs' relentless attacks on the Plan's "church plan" status, and the broader fight over exactly when the Plan's exempt status ended (if it ever began), should be seen for what they are: attempts by Plaintiffs to push the date at which the Plan lost its "church plan" status back to before the date the Prospect Defendants purchased operating assets from SJHSRI and from CharterCare Health Partners, Inc. ("CCHP"), so they can besmirch their motives. The reality is that Plaintiffs have only been able to uncover potential flaws in the Plan's operations after spending tens of thousands of hours and hundreds of thousands of dollars, and several years, digging through millions of records and other documents in search of flaws – all in a vain attempt to force the Prospect Defendants to pay the obligations of a pension plan it manifestly never acquired or assumed.

There is no question that the Plan is severely underfunded, and that this is an understandable source of distress to the Plan and its participants. But the Prospect Defendants are not responsible for this state of affairs, and Plaintiffs reach too far in trying to force the Prospect Defendants to pay for it. If one thing is clear, it is that the underfunding occurred before Prospect came on the scene and, like the Plan, has now continued for years afterward (currently, six years and counting). Prospect agreed to purchase the assets and has worked to keep the hospitals functioning when it is certain they otherwise would have gone bankrupt and closed. This

[5] Plaintiffs' own summary judgment motion made no attempt to challenge SJHSRI's tax-exempt status – a finding that would eviscerate the Plan's ability to qualify for ERISA's church plan exemption, even with respect to taxable years preceding 2010, or even 2008. Indeed, if SJHSRI has *never* been a tax-exempt entity, the status of the Plan as a "church plan" likely would be the least of its and its stakeholders' worries, since that would radically alter the tax-favored status of the debt obligations sold to SJHSRI's bond holders, completely eliminate the Plan's qualification as a "church plan," eliminate the tax deductibility of any contributions, gifts or bequests made to SJHSRI by donors (certainly, those made in an open tax year), and cause SJHSRI to lose a variety of state and local tax benefits available only to tax-exempt organizations.

acquisition was the subject of rigorous regulatory investigation and approval. The Receiver's efforts to unwind and second-guess this deal, six years later, should not be countenanced. No purchaser of a going concern's operating assets would engage in such exhaustive digging to investigate an asset, or an obligation, that it has no intention of purchasing or assuming – and no for-profit business assumes defined benefit pension plan obligations any more as part of an acquisition.

Simply, the Plan's status as a "church plan" – whether in 2008, 2010, 2011, 2014, or even now - was never a concern for the Prospect Defendants. None of the Prospect Defendants ever sponsored the Plan, or served as a Plan fiduciary, or set any of its terms, or handled any of its investments. And secular organizations like the Prospect Defendants could not have, and would not have, assumed a pension plan that either was an ERISA-exempt, non-electing church plan, or was as deeply flawed as Plaintiffs portray it to be.

In view of the foregoing, the Prospect Defendants offer a limited rebuttal to Plaintiffs' furious attack. They do so in the belief that the exact date the Plan actually lost its special status as an exempt church plan is less important than showing that it was entirely plausible and reasonable for purchasers like the Prospect Defendants to conclude that the Plan qualified – or, was in a position to qualify – as a non-electing church plan when considering the representations, warranties and indemnifications that SJHSRI and CCHP consistently provided. SJHSRI and CCHP repeatedly and resolutely affirmed that the Plan constituted a non-electing church plan exempt from ERISA. Those representation and warranties made sense then, and now, because the Diocese remained actively involved in SJHSRI's affairs, and because ERISA Section 3(33)(C) could be counted on to correct retroactively any regulatory problems that might emerge.

In service to this objective, the Prospect Defendants offer the following three points, in rebuttal, and otherwise stand on the arguments and evidence already submitted:

- Plaintiffs' continuing contention that ERISA's "church plan" exemption is to be narrowly construed (Pl. Opp. at 27) ignores ERISA Section 3(33)'s unique provisions, as well as the cascade of cases involving church organizations and church plans that continue to demonstrate that the laws that apply to religious organizations are liberally construed in favor of protecting such organizations from undue and intrusive regulation.

- Plaintiffs' contention that the Supreme Court's decision in *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017) ("*Stapleton*") countenances its reading of "principal purpose or function" to mean "principal purpose or principal function", and that such a reading constitutes the "plain meaning of the statute" (Pl. Opp. at 29), is simply wrong-headed for two reasons: "purpose" and "function" are synonyms (so adding "principal" to "function" would actually render "function" superfluous); and in *Stapleton* the Supreme Court's decision had the effect of *saving* an entire generation of church plans, then at risk of losing their exempt status.

- Plaintiffs' contention – that CharterCare Health Partners ("CCHP"), SJHSRI's corporate "parent" after 2009, was never, and could not have been, controlled by the Catholic Church (or, that such control could not have been temporarily extended) – fails to account for the unique facts and circumstances present here, such as the financial importance to both SJHSRI and CCHP of preserving the Plan's *status quo* as a non-electing church plan while a buyer was being found for the hospitals. Those circumstances suggest that Plaintiffs' ivory tower "control" analysis is misguided.

Whatever this Court decides in regard to determining exactly <u>when</u> the Plan lost its way as a non-electing church plan, it should decline Plaintiffs' invitation to descend into the weeds. Perspective can get lost, and result in error, that way. The Court should consider the forest, not the capillaries of the leaves. Doing so, we are confident it will grant our motion.

ARGUMENT

A. Contrary to Plaintiffs' Continued Suggestions, Exemptions Created for Religious Organizations Are To Be Construed Broadly; ERISA §3(33) Not Only Is No Exception, But Constitutes A Prime Example Of an Exemption Designed to be Broadly Construed.

In their Opposition, Plaintiffs reiterate their position that all statutory exemptions from ERISA are to be narrowly construed, and that the exemption found in ERISA §3(33) is no different.

(Pl. Opp. at 27.) In so doing, Plaintiffs draw on, *inter alia*, the more expansive argument they made in the Reply they filed September 1, 2020 (ECF #197), in response to the Opposition Memorandum Prospect Defendants filed on June 26, 2020 (ECF #193-1) to counter Plaintiffs' original Motion for Summary Judgment (ECF # 173).

One of Plaintiffs' goals in that 101-page Reply consisted of an attempt to normalize ERISA's church plan exemption – in effect, to show that the exemption should be treated like any other ERISA exemption or exclusion – by linking ERISA's church plan exemption to ERISA's other provisions.[6] (Pl. Reply at 36-41.) Plaintiffs' repeated attempts to treat an exemption crafted specifically for use by religious organizations and those closely associated with them as nothing special – a statute to be handled the same as any other statutory exemption found in ERISA – fall short.

First, as the Court knows from our prior submissions, ERISA §3(33) has a unique self-curing, self-corrective provision that no other ERISA statute has: subparagraph (D), which allows a defective church plan to be *retroactively* fixed by its sponsor, and provides the sponsor with a generous amount of time in which to do so, even after the defect has been found by others.[7] No other statutory exemption can boast having such a self-help feature, which obviously is designed

[6] In their Reply, Plaintiffs even seek to draw upon legislative coincidence – the fact that in 1980, Congress made changes to both ERISA Title I's church plan exemption and ERISA Title IV's multiemployer plan rules in the same public law (the Multiemployer Pension Plan Amendments Act, or "MEPPAA") – in an effort to suggest that religious and secular rules are seen as the same by Congress. (Pl. Reply at 37-38.) Not so. As we pointed out in our Opposition Memorandum, the amendment to ERISA's church plan rule was tacked onto MEPPAA as an unrelated amendment with its own unique history and policy underpinnings. *See* Prospect Opp. Mem. at 34-35, Note 49.

[7] Plaintiffs have gone to great lengths to trivialize this provision, in some cases contending that it is moot or irrelevant simply because SJHSRI has not (yet) invoked it, but they have not challenged – because they cannot – the extraordinary relief it is capable of providing, or explain why Congress chose to provide religious organizations with such extraordinary relief.

to minimize the ability of regulatory agencies and others to intrude upon a religious organization's (or an associated organization's) internal workings.

Second, the Supreme Court has made clear, again and again, that religious organizations (and, apparently, those that choose to associate with them, or embrace their teachings) are to be given wide berth when it comes to enforcing federal law – or even state law – against them. The Supreme Court's 2017 decision in *Stapleton* well illustrates this deeply-held view, in that the Court carefully deconstructed ERISA §3(33) and examined "every clause and word" in an effort to provide the church-affiliated hospital system before it with the benefit of every doubt.

Nor was *Stapleton* the first or last case where the Supreme Court has driven home that point. Thus, the Supreme Court, in *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682 (2014), invoked the Religious Freedom Restoration Act of 1993 ("RFRA") to exempt a private business organization that embraced and espoused right-to-life religious teachings from a key Affordable Care Act ("ACA") requirement that requires employers to provide their employees with access to contraceptives. As Justice Alito, writing for the majority in *Hobby Lobby*, described the RFRA's purpose and provisions in the following terms:

> RFRA prohibits the "Government [from] substantially burden[ing] *a person's* exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to *the person*—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U. S. C. §§2000bb–1(a), (b) (emphasis added).

Hobby Lobby, 573 U.S. at 705.

Moreover, within just the past thirty days, the Supreme Court again singled out religious organizations for protection by indicating that they should not be subjected to the same restrictions that a variety of state governors have imposed on the general public when combatting the spread of Covid-19. *E.g*., *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. ____, 2020 U.S.

LEXIS 5708 (Nov. 20th) and *Harvest Rock Church, et al. v. Newsom*, 977 F. 3d 728 (9th Cir. 2020), *writ of cert. granted, remanded by Harvest Rock Church, Inc. v. Newsom*, 592 U.S. ____, 2020 U.S. LEXIS 5709 (Dec. 3rd).

Religious organizations – and, as ERISA §3(33) makes plain, other organizations controlled by or associated with them – are considered special, and exemptions that apply to them are not to be construed and enforced the same way as other exemptions. Narrow, "gotcha" readings as offered by Plaintiffs here are exactly contrary to what Congress had in mind, particularly when one considers the RFRA's purpose and provisions. The connection between cases such as this one and *Hobby Lobby* are not far-fetched. In *Hobby Lobby* there was a clear economic aspect to the governmental burden being imposed. There, it was the cost of paying for and providing contraceptives. Here, the clear economic aspect has to do with the fact that ERISA imposes on plan sponsors aggressive plan funding obligations and fiduciary obligations, which often weigh heavily on religious organizations (and their affiliates) that suffer from both uneven revenue streams and unpredictable expenses – often, as a result of fulfilling their religious and charitable obligations (such as providing charity care).

Plaintiffs' "gotcha"-oriented reading of ERISA §3(33) thus is wholly incompatible with the proper way to view ERISA's "church plan" exemption: as one designed to cut religious organizations, and those associated with them, important leeway.

B. *Stapleton* Supports the Prospect Defendants' Reading, Not Plaintiffs' Strained Reading, of "Principal Purpose or Function"

One of Plaintiffs' key contentions in support of their conclusion that the Plan ceased to qualify as a church plan after July 1, 2011 is that neither of the committees that the Prospect Defendants have identified as satisfying the "principal purpose organization" ("PPO") standard

can actually pass the "principal purpose or function" test, which is one of the key tests found in ERISA §3(33)(C)(i). Viewed in its entirety, that test reads as follows:

> (i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches **includes a plan maintained by an organization**, whether a civil law corporation or otherwise, **the principal purpose or function of which is the administration or funding of a plan or program** for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

ERISA §3(33)(C)(i), *codified at* 29 U.S.C. §1002(33)(C)(i) (emphasis added).

Plaintiffs claim that the Prospect Defendants' reading of "principal purpose or function" is contrary to both the plain meaning of the statute and contrary to the Supreme Court's decision in *Stapleton*, Pl. Opp. at 28-29, and that the reading they offer in their September 1st Reply is the better view. (Pl. Opp. at 28-29, referencing and incorporating Pl. Reply at 41-89.) They are wrong.

The Supreme Court teaches in *Stapleton* to "give effect, if possible, to every clause and word of [the] statute." *Stapleton*, 137 S. Ct. 1652, at 1659, *quoting Williams v. Taylor*, 529 U.S. 362, 404 (2000) (emphasis added). The majority opinion in *Stapleton* nowhere extols the virtues of adding words, or clauses, to the statute, as though federal statute was a wine in need of fortification.

Yet that is what Plaintiffs' reading entails. Plaintiffs ask the Court to rewrite the phrase "principal purpose or function" to read "principal purpose or principal function." The great irony is that Plaintiffs assert that the only way to understand the "plain meaning" of the phrase is by rewriting it to add an *implied* word. In fact, the "plain meaning" of the phrase comes from giving separate meaning to each separate term, not by adding what is not there – that gives it a different meaning. As always, we assume Congress knows what it is doing; it says what it means and means what it says.

Moreover, and perhaps more telling, Plaintiffs' suggested addition would render the word "function" entirely superfluous, because "purpose" and "function" are synonyms. According to Merriam-Webster (now, on-line),[8] those two words mean pretty much the same thing – yet here, Congress chose to separate them by using a disjunctive ("or") thereby transforming them into two different standards, instead of using a conjunctive ("and") which would have simply reiterated and reinforced the same standard. Simply, Plaintiffs' rewrite of the statute would transform "principal purpose or function" into "principal purpose or principal purpose."

Plaintiffs also go way too far when they suggest that the colloquy that took place in 1980 on the floor of the United States Senate, between Senators Talmadge and Long, supports Plaintiffs' narrow reading of this provision. It does no such thing. Here is the colloquy, taken *verbatim* from Plaintiffs' Reply:

> Mr. Talmadge. Mr. President, I understand that many church plans are maintained by separate incorporated organizations called pension boards. These boards have historically been considered by church denominations as part of their church. May I ask whether the bill would enable a church pension board to maintain a church plan?
>
> Mr. Long. Yes. I concur that a pension board that provides pension or welfare benefits for persons carrying out the work of the church and without whom the church could not function is an integral part of the church and is engaged in the function of the church even though separately incorporated. The bill recognizes the status of a church plan maintained by a pension board by providing that a plan maintained by an organization, whether separately incorporated or not, **the principal purpose** of which is the administration or funding of a plan or program for the provision of retirement or welfare benefits for the employees of a church, is a church plan provided that such organization is controlled by or associated with the church.

Pl. Reply at 52-54 (*quoting from* 11126 Cong. Rec. 20245 (July 29, 1980)) (emphasis added by Plaintiffs).

[8] *See* www.merriam-webster.com/thesaurus/purpose (identifying the synonyms for "purpose" (second definition, which is "the action for which a person or thing is specially fitted or used or for which a thing exists")).

It is highly notable that, in the above colloquy, Senator Long used the word "function" twice in the answer he provided (*e.g.*, "the function of the church", etc.), but *not* in conjunction with the phrase "principal purpose." Yet both concepts – "principal purpose" and "function" – were included in the final statute, separated by a disjunctive ("or"). And there can be no question that, when Senator Long was referring to the "function of the church" on the floor of the Senate, he was not attempting to describe a church that had, as its singular "function" or even as its "principal" "function," the funding or the maintenance of a pension plan or a welfare plan. That particular activity would be only one of a church's many "functions." For those reasons, the Talmadge-Long colloquy supports the conclusion that Congress was perfectly content to allow an organization willing and able to handle an important church-related "function" such as funding or administering the organization's pension plan (or welfare plan) to qualify as a PPO even if it had other obligations, just as it was content to allow an organization whose "principal purpose" it is to administer or fund the church organization's pension plan to qualify as a PPO. The Talmadge-Long colloquy set the stage for the drafters of the bill to expand the "principal purpose" test to make it possible for committees, etc. that are willing to provide that helpful "function" (even where it is not their "principal purpose") to qualify as PPOs, thereby making the rule found in Section 3(33)(C) more flexible and easier for religious and religious-associated organizations to satisfy.

This broader, more flexible reading is entirely consistent with the intent of Congress and the understanding of the courts: to be able to read and construe ERISA's church plan exemption broadly, so that the exemption can be relatively easy for a religious organization or for an associated organizations, to attain. In contrast, Plaintiffs' reading transforms the "principal purpose organization" rule into a high-wire act. Looking at the structure of the Act, the forgiving "clean-up" provision expressly provided for religiously-affiliated groups, and the plain language

of the phrase, the Prospect Defendants' reading of the "principal purpose or function" test, by far, is the better reasoned of the two, effectuates what Congress intended, and comports with both the spirit and letter of the RFRA (discussed in Part A, above).

C. Contrary to Plaintiffs' Contentions, The Bishop Did Control CCHP During the 2010-2014 Transition Period Because of the Unique Facts and Circumstances Present Here.

Plaintiffs' opposition, in parsing and construing the "controlled by" part of the PPO test, initially agrees with the Prospect Defendants' argument: there is no statutory definition, but some regulatory guidance can be found from the U.S. Treasury Department,[9] and there are cases where courts have explored this same passage – although the court cases reveal only a general discussion and acknowledgement of the rule.[10] (Pl. Opp. at 29-32.) And we are in general agreement with Plaintiffs that the guidance that has come out largely has focused on the ability to appoint and remove the majority of a tax-exempt organization's directors or trustees. (*Id*.)

However, unlike Plaintiffs, who seem to assert that "control" is to be understood exclusively by determining whether one person or organization has the right to appoint and remove a majority of a second organization's directors or trustees, Pl. Opp. at 31 and at 35-42, a standard that reduces "control" to a numbers game, the Prospect Defendants contend that this decision

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[9] The U.S. Treasury Department has promulgated two sets of regulations which provide guidance in this area. One set of Treasury regulations was promulgated under Section 414(e)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). Those regulations are based on the exact same statutory language that is found in ERISA §3(33)(C); a comparison of Code §414(e)(3)(A) and ERISA §3(33)(C) makes this apparent. Congress put a parallel provision to ERISA §3(33)(C) in the Code, because the IRS is responsible for regulating tax exempt entities and the pension plans they maintain, including "church plans" which are subject to a different and more lenient set of tax-qualified plan rules. The other set of Treasury regulations, not directly linked to "church plans" *per se*, is promulgated under Code §§414(b) and (c) to extend the so-called "controlled group" rules to tax-exempt and other non-profit organizations that do not issue "stock" or similar ownership rights (which is the usual test). Plaintiffs discuss both in their Opposition (Pl. Reply at 30-32), as do we in our cross-motion. (Prospect Opp. Mem. at 52-54.)

[10] *See, e.g., Lown v. Continental Cas. Co*., 238 F.3d 543, 547-48 (4th Cir. 2001) ("*Lown*") (applying a "corporate" standard to determine control). Plaintiffs briefly (for them) discuss *Lown* and a handful of other cases in their Opposition. (Pl. Opp. at 30-31.) We discuss those cases, and others, more at length and in two sections in our Opposition Memorandum – once, when discussing SJHSRI, and once when discussing CCHP. (Prospect Opp. Mem. at 52-56 (discussing SJHSRI), and at 63-64 (discussing CCHP).)

requires the Court to examine the specific facts and circumstances of each particular situation to determine the answer. That is why, in our Memorandum of Law, we cite "result"-oriented cases, such as *Overall v. Ascension*, 23 F. Supp. 3d 816, 829-830 (E.D. Mich. 2014), and *Catholic Charities of Maine v. City of Portland*, 304 F. Supp. 2d 77, 85 (D. Me 2004), where the district court (in *Catholic Charities*) found that "the Bishop of Portland *essentially controls* the Board of Directors" (as opposed to controlling the board "by the numbers"). *Id*. As such, we take exception to Plaintiffs' assertion that "Plaintiffs and Prospect agree on the legal standard" when it comes to analyzing the "controlled by" question. (Pl. Opp. at 37.) In fact, we do not: Plaintiffs rely on a simplistic formalism, while the Prospect Defendants believe the inquiry must look deeper. Thus, we note that the Treasury regulations to Code §414(e)(3), which both sides cite in their briefs, describe the "right to appoint" test as an "example" of control, never stating that it was the *only* way to decide the question. (Pl. Opp. at 30-31, *quoting from* Treas. Reg. §1.414(e)-1(d)(2).)

Eschewing the formalistic test that Plaintiffs offer, we believe a deeper inquiry is required, one that takes into account the unique circumstances that were present here within CCHP and SJHSRI: in 2010, it became apparent to those in charge of both organizations that the hospitals were hemorrhaging cash, and that a buyer needed to be found for them while preserving the *status quo* – including the *status quo* when it came to the Plan's ability to retain its status as a church plan, since a loss of "church plan" status at that point would have subjected both SJHSRI and CCHP (as SJHSRI's "parent") to the full brunt of ERISA's funding rules at a time when neither could afford it.

When those in charge of SJHSRI and CCHP were confronted with this grim reality, and understanding that the only way to keep the hospitals functioning required that they be sold (as assets) while the pension funds (as liabilities) remained behind, they decided against going back

and redoing the entire organizational structure of both SJHSRI and CCHP and their relationship(s), or finding some other way to perpetuate the SJHSRI committees that had been responsible for administering and funding the Plan before the affiliation was put into effect. Instead, they opted to extend the arrangements that were put in place during the Transition Period until a buyer could be found. The effect of this was to extend the Bishop's power-to-appoint control over CCHP. This was the configuration that Prospect met when it appeared and, ultimately, consummated the deal to acquire the assets – but not the liabilities – of CCHP. These facts and circumstances are unique, but the "controlled by" test is functional, not formalistic, and supports the conclusion that Plan was a "church plan" at the time of that deal.

CONCLUSION

As the Prospect Defendants have maintained all along, the Plan currently is subject to ERISA. Plaintiffs' resolute attempts to place the Plan's loss of "church plan" status at an earlier point in time, in a transparent effort to improve the quality of their claims against the Prospect Defendants, place them further and further from reality. The reality here is that considered steps were taken by those in charge of SJHSRI and Roger Williams Hospital in 2008 to combine the two organizations in 2009, and then slowly integrate the two without undermining the organizational integrity of either of them (or here, the Plan) until the combined hospitals either could be financially stabilized, or sold. History shows that their strategy worked. Instead of applause for having averted a financial collapse, though, they got sued – and the Prospect Defendants got sued with them.

Occam's Razor teaches that the simplest explanation is usually the correct one. Here, that explanation is that the Plan properly qualified as a "church plan" through the time Prospect acquired the hospital assets, but thereafter – either upon its uncoupling from the hospitals'

operations or sometime later – lost that status. Plaintiffs ask the Court to ignore the spirit of ERISA's religious exemption, rewrite the statute's language, and ignore the functional operation of the Plan in service of their goal. The Court should decline the invitation and grant this motion.

Respectfully submitted this eighth (8th) day of December, 2020.

PROSPECT MEDICAL HOLDINGS, INC. and
PROSPECT EAST HOLDINGS, INC.

By their attorneys,

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Dated: December 8, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December 2020, I have caused the within document to be filed with the Court via the ECF filing system. As such, this document will be electronically sent to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Dean J. Wagner, Esq.